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REMARKS

Claims 1-30 are currently pending in the subject application and are presently under consideration. A clean version of all pending claims is found at pages 2-8.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments herein. It is respectfully submitted that this rejection should be withdrawn for at least the following reasons.

**I. Rejection of Claim 30**

Claim 30 stands rejected by Examiner as being independent or distinct from the invention originally claimed. However, claim 30 does stand directed to an invention that is independent or distinct from the invention originally claimed. Claim 30 is respectfully requested to be directed to the elected invention for at least the following reasons.

Claim 30 states "*A data packet* transmitted between two or more components that facilitates semiconductor device manufacture, the data packet comprising information, *based, in part, on a scatterometry derived means for producing multi-sloped profiled devices.*" The Examiner states claim 30 relates to a data packet, which is not a system or a method as in claims 1-29. Yet, the allowed claim 14 claims "*A data packet...employed in fabricating a multi-sloped semiconductor device...comprising...measuring at least one etching parameter based on the light reflected from the wafer...*" The data packets within independent claims 14 and 30 relate to a system and/or method for creating a multi-sloped device utilizing scatterometry. Both data packets relate to producing (e.g., fabricating) a multi-sloped semiconductor device utilizing scatterometry (e.g., measuring based on the light reflected from the wafer). Applicant's representative emphasizes the distinction of claim 14 and 30 as the transmission communication (e.g., claim 14 is between two or more processes, and claim 30 is between two or more components). Moreover, the Examiner stating claim 14 as being related to the subject invention is prima facie evidence of claim 30 being related to the subject invention as discussed *supra*. It is respectfully requested that claim 30 be considered directed to the claimed invention and the requested cancellation be withdrawn.

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## II. Rejection of Claims 1-29 Under 35 U.S.C. §103(a)

Claims 1-29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ausschnitt (US 5,629,772) in view of the acknowledged prior art of the instant specification and Coronel *et al.* (US 5,658,418). Withdrawal of the rejection is respectfully requested for at least the following reasons. Neither Ausschnitt nor Coronel *et al.* alone or in combination teach or suggest applicant's claimed invention.

Independent claims 1, 8, 12-15, 25, 29, 30 (of which claims 2-7, 9-11, 16-24, 26-28 respectively depend therefrom) utilize the employment of scatterometry for the fabrication of a **multi-sloped semiconductor device**. The Examiner cites Ausschnitt as teaching the regulation of an etch process by the use of optical measurements. Yet, Ausschnitt does not teach or suggest the use of *scatterometry* for producing **multi-sloped devices** as in the invention as recited in the subject claims. Rather, Ausschnitt teaches a method, in which "*measurements are performed on a test pattern...*" (Col. 5, lines 13-16) (emphasis added). Additionally, Ausschnitt provides "*the monitoring and control of a product... by use of a unique test pattern...*" (Col. 8, lines 15-19) (emphasis added). In other words, Ausschnitt teaches utilizing measurements on a test pattern, which is later used for the monitoring and control of a product. Thus, there is no **monitoring and control of a product** with the use of scatterometry and/or detecting the reflected light off the wafer. Rather, the cited reference teaches the monitoring and controlling of the product with a test pattern. Furthermore, the product within Ausschnitt is not a **multi-sloped device** as required by the subject claimed invention. The rejection is respectfully requested to be withdrawn.

Moreover, the cited combination of Ausschnitt with Coronel *et al.* fails to make the claimed invention obvious. The Federal Circuit has consistently held that in order to establish obviousness *vis-à-vis* a combination of cited references, the cited references **must themselves provide a suggestion for the combination** to one of ordinary skill in the art. The suggestion for such a combination cannot and must not be based on applicant's disclosure using hindsight. See *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Here, neither the nature of the problem to be solved, the teachings in the cited art, nor the knowledge of persons of ordinary skill provides sufficient suggestion or motivation to combine the references. Instead, the Examiner relies on improper hindsight in reaching his obviousness determination. The Federal

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Court has held that to imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher. One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to depreciate the claimed invention. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d (BNA) 1596 (Fed. Cir. 1988) (citations omitted). Ausschnitt and Coronel *et al.* cannot be combined to make the present invention obvious because there is not proper suggestion or motivation to combine the references teachings to create the subject matter of independent claims 1, 8, 12, 13, 14, 15, 25, 29 and 30. Coronel *et al.* states "a light source illuminates a portion of the structure at *a normal angle of incidence* through the viewport" and "*a normal angle of incidence is preferred.*" (See Abstract, lines 5-6 and Col. 7, lines 51-52). One of ordinary skill in the art understands the normal angle of incident (*e.g.*, perpendicular) is not a functionally-correct angle for scatterometry and/or detecting the reflected light off the wafer. Therefore, no motivation exists for the combination of Ausschnitt with Coronel *et al.* since Coronel teaches away from utilizing scatterometry and/or detecting the reflected light off the wafer by using the normal angle of incident.

Thus, there is no motivation to combine Ausschnitt with Coronel *et al.* to make the claimed invention obvious. Accordingly, it appears that the purported combination of references is based on improper hindsight, in which the present application provides the teaching and motivation to do so. (See MPEP 2141 which states, "The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention.").

Furthermore, the Examiner states "the instant specification notes that scatterometry a known optical technique for such measurements...which discloses states scatterometry is 'well-known in the art.'" (See page 4 of the Final Office Action dated May 15, 2003). The applicant's representative respectfully traverses the latter statement. The subject specification states "*Scatterometry systems* are well-known in the art, and therefore further discussion related thereto is limited for the sake of brevity." (See Subject Specification, page 12, lines 14-16) (emphasis added). Additionally, the specification states, "The scatterometry system 822 *employed* in the measuring system may be any scatterometry system suitable to carry out the present invention..." (See Subject Specification, page 12, lines 12-14) (emphasis added). No

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where in the specification does the applicant state that scatterometry is a well-known technique within the art. The specification only acknowledges the employment of scatterometry systems is well-known within the art and an explanation of such employment would be limited for the sake of brevity.

For these reasons, withdrawal of this rejection and allowance of independent claims 1, 8, 12, 13, 14, 15, 25, 29, 30 (and claims 2-7, 9-11, 16-24, 26-28 which depend therefrom) is respectfully requested.

#### CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

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